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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

D.D. et al.,	
Plaintiffs and Respondents,	E069959
v.	(Super.Ct.No. FAMVS1701524)
C.R.,	OPINION
Defendant and Appellant.	

APPEAL from the Superior Court of San Bernardino County. J. Bruce Minton, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Dismissed.

Law Offices of Valerie Ross and Valerie Ross for Defendant and Appellant.

No appearance for Plaintiffs and Respondents.

J.R. is a 10-year old boy. J.R.'s biological father's (Father) rights were terminated by the dependency court. J.R. was adopted by C.R. (Adoptive-Mother) and J.L.R. (Adoptive-Father). J.R.'s biological paternal aunt, I.L. (Aunt), and biological paternal grandmother, D.D. (Grandmother), petitioned the family court for visitation

with J.R. (Fam. Code, § 3104.)[1] The family court granted Adoptive-Mother's motion to strike the petition, but then granted Aunt's and Grandmother's motion for relief (Code Civ. Proc., § 473, subd. (b)). In granting relief, the family court vacated its order striking the petition and placed the matter back on calendar. Adoptive-Mother contends the family court erred by granting relief because Aunt and Grandmother are legal strangers to J.R. following the adoption and therefore do not have the right of visitation. We dismiss the appeal.

FACTUAL AND PROCEDURAL HISTORY

A. BACKGROUND

J.R. is male and was born in March 2009. In 2010, San Bernardino County Children and Family Services removed J.R. from Father's custody, due to neglect. J.R. and his two half siblings, N.N. and K.A., were placed in foster care. J.R. remained in foster care for approximately two years. Grandmother was unable to care for J.R. due to medical issues. Aunt was unable to care for J.R. because she could not adopt all three half siblings.

In March 2012, Father was sentenced to prison. Also in March 2012, Father's parental rights were terminated. J.R. and K.A. were adopted by Adoptive-Mother and Adoptive-Father. N.N. chose to not be adopted. Adoptive-Mother and Adoptive-Father permitted Grandmother and Aunt to continue visiting J.R. after the adoption, but they did not enter into a formal postadoption visitation contract.

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[1] All subsequent statutory references will be to the Family Code unless otherwise indicated.

In May 2016, Adoptive-Father pled guilty to molesting a foster child (not J.R.), who was under 14 years of age, and who was in Adoptive-Father's care. (Pen. Code, § 288, subd. (a).) The criminal trial court sentenced Adoptive-Father to prison for a term of eight years. After Adoptive-Father's conviction, Adoptive-Mother facilitated communication between J.R. and Adoptive-Father. Upon learning of the communication, Aunt asked Adoptive-Mother questions about Adoptive-Father, such as whether he had been released from prison. After Aunt's questions, in December 2016, Adoptive-Mother discontinued J.R.'s visits with Aunt and Grandmother.

B. PETITION

In May 2017, Aunt and Grandmother (collectively, Petitioners) petitioned the family court for visitation with J.R. Petitioners relied upon the grandparent visitation law as the basis for their request. (§ 3104.) Petitioners asserted they had contact with J.R. throughout his life and that they all shared a familial bond from the time spent together. Petitioners contended Adoptive-Mother knew of Adoptive-Father's molestation of the foster child while it was occurring, and that Adoptive-Mother did nothing to protect the foster child. Further, Petitioners asserted N.N. and K.A. moved out of Adoptive-Mother's home.

Petitioners contended visitation with Petitioners would be in J.R.'s best interests because J.R. relied upon Petitioners for emotional support, which he needed after (1) losing his Adoptive-Father to prison, and (2) his half siblings moving out of the adoptive home. Petitioners asserted J.R. should not have to lose his paternal biological family in addition to the losses in his immediate family, e.g., his half siblings and

Adoptive-Father. Petitioners contended the loss of relationships would cause J.R. to be isolated and suffer abandonment issues. Petitioners requested once per month weekend visits with J.R., two weeks of summer vacation visits, holiday visits, and birthday visits.

C. MOTION TO STRIKE

Adoptive-Mother moved to strike Petitioners' petition. (Code Civ. Proc., § 435.) Adoptive-Mother asserted the petition should be stricken because J.R.'s paternal biological family no longer had visitation rights due to Father's parental rights being terminated and J.R. being adopted. Adoptive-Mother asserted Petitioners were legal strangers to J.R. Adoptive-Mother contended legal strangers cannot bring an independent child visitation case—they can only be heard by joining in a dissolution, separation, or other pending case. Adoptive-Mother asserted, "An independent action for visitation by nonrelatives who are not a stepparent, nor a grandparent, nor a former legal guardian, is an action not drawn in conformity with the laws of this state."

D. OPPOSITION TO THE MOTION TO STRIKE

Petitioners responded to Adoptive-Mother's motion to strike. Petitioners asserted they had a relationship with J.R. throughout his life and therefore Adoptive-Mother "should be estopped from asserting a lack of familial relationship."

E. HEARING ON THE MOTION TO STRIKE

On June 26, 2017, the family court held a hearing in the matter. Adoptive-Mother argued that because Father's rights were terminated, Petitioners' legal relationships with J.R. were also terminated. Adoptive-Mother explained, "[T]his is not

a grandparent any longer." Adoptive-Mother asserted legal strangers to a child could not bring an independent visitation case.

Grandmother asserted that she was J.R.'s biological relative and could therefore seek visitation with him. Grandmother contended it was in J.R.'s best interests to continue visiting Grandmother. The family court explained that the grandparent visitation statute prohibited a petition for grandparent visitation if the child's parents were married. (§ 3104, subd. (b)(6).) The family court confirmed that Adoptive-Mother and Adoptive-Father were married, and then asked, "So how do we get around that part[?]" Petitioners asserted there could be an exception because the petition was in J.R.'s best interests.

The family court said it intended to grant the motion to strike for the reasons argued by Adoptive-Mother. The family court asked if the parties had anything further to offer, and the parties said they had nothing. The family court explained that Petitioners had to first meet the criteria for filing a petition before the best interest issue could be addressed. The family court said, "The motion to strike is granted for the reasons I stated."

F. MOTION FOR RECONSIDERATION

Petitioners filed a motion for relief. (Code Civ. Proc., § 473, subd. (b).) Petitioners asserted they did not have a copy of the Family Code with them at the hearing on the motion to strike. Petitioners contended there was a statutory exception that permitted a grandparent to petition for visitation when the child's parents were married, and that exception was the incarceration of one of the parents. (§ 3104, subd.

(b)(6).) Petitioners contended that Adoptive-Father's incarceration meant that Petitioners could properly seek visitation with J.R.

G. OPPOSITION TO THE MOTION FOR RELIEF

Adoptive-Mother responded to Petitioners' motion for relief. Adoptive-Mother contended Petitioners were legal strangers to J.R. Adoptive-Mother asserted legal strangers cannot bring an independent action seeking visitation with a child. Petitioners did not file a reply.

H. HEARING ON THE MOTION FOR RELIEF

The family court held a hearing on Petitioners' motion for relief. Petitioners contended that section 3104 permitted grandparents to seek visitation with a grandchild, including a grandchild that has been adopted.

The family court said, "Well, the Court's concern is that when the adoption took place, the parental rights were terminated and when the parental rights have been terminated, the rights of those biological families have been terminated. That's the Court's understanding and feeling." Petitioners asserted, "[T]o follow that to the end would be an absurdity. It would give higher priority to the [adoptive] grandparent as a position to the [biological] grandparents. I don't think that's what the [L]egislature ever intended."

Adoptive-Mother responded, "Your Honor, if I could say that were this as counsel suggest[s], it would blow sky high private adoption from one end of the state to the other." Petitioners replied, "Perhaps, your Honor, I wouldn't look at it as blowing something up. I would say it would be an additional positive for the minor child,

because the Court must determine first whether or not it's in the best interest of the minor child." The family court took the matter under submission.

I. STATEMENT OF DECISION

The family court issued a statement of decision. The family court granted the motion for relief. (§ 473, subd. (b).) The family court vacated its order striking Petitioners' petition, ordered Adoptive-Mother to file a response to the petition, and placed the matter back on calendar.

The family court provided the following explanation of its reasoning: Section 3102 concerns visitation by relatives following the death of a child's parent. Section 3102, subdivision (c), provides: "This section does not apply if the child has been adopted by a person other than a stepparent or grandparent of the child. Any visitation rights granted pursuant to this section before the adoption of the child automatically terminate if the child is adopted by a person other than a stepparent or grandparent of the child." The family court noted that section 3104, which applies in the current case, does not have similar language concerning termination of visitation upon adoption of a child.

The family court continued, "Fundamentally, the Legislature felt 3104 furthered a child's interest by allowing for the continuation of a relationship with his/her grandparents. The Legislature expressed its desire to avoid grandchildren being 'totally cut off from the grandparents whom they have learned to love and to trust for support and guidance.' . . . The only reasonable application of this statute is that the

[L]egislature did not intend to terminate visitation rights under 3104 as it did in 3102(c)."

J. REQUEST FOR STAY

In January 2018, Adoptive-Mother filed an ex parte application to stay the proceedings in the family court pending a resolution of the appeal she planned to file in the case. The family court held a hearing on Adoptive-Mother's application. Adoptive-Mother asserted her request for a stay was based upon the family court lacking jurisdiction to grant visitation to biological grandparents after a child has been adopted by a non-family member. Adoptive-Mother cited *Huffman v. Grob* (1985) 172 Cal.App.3d 1153 to support her argument.

The family court said, "I know that the language of 3104 specifically says, 'A petition for visitation under this section shall not be filed while the natural or adoptive parents are married.' [¶] Why would the [L]egislature use the language natural or adopted parents if the Court could not consider a petition for grandparent visitation if there were an adoption?" Adoptive-Mother explained that the Legislature was referring to visitation by adoptive grandparents. Adoptive-Mother asserted that Petitioners should have sought a postadoption visitation contract in the dependency court, which would be enforced by the dependency court.

The family court said, "And as the Court noted, it is a convincing argument with logic, but it doesn't seem to be supported by the statute and its discussion in the notes from the [L]egislature." The court continued, "If the parents' rights are terminated and there's no kinship, then the grandparents' rights would be terminated. So I understand

that logic. It makes sense to the Court. [¶] But then when I see what the [L]egislature discussed and why they put value on grandparents' visitation, and as I noted in the finding or statement of decision, I don't have sufficient facts at this time to make the necessary findings to allow visitation."

Adoptive-Mother reiterated that she was asking for a stay pending resolution of the appeal she intended to file. Petitioners asserted, "[T]o say that an adoptive grandparent has grandparent rights above and beyond what should be considered the [biological] grandparent is an absurd argument. I don't think the [L]egislature ever intended that." The family court denied Adoptive-Mother's request for a stay.

DISCUSSION

A. PROCEDURAL HISTORY

Adoptive-Mother filed her notice of appeal on February 8, 2018. On July 10, Adoptive-Mother moved this court to dismiss her appeal so that she could instead file a petition for writ of mandate. On August 14, this court denied the motion. This court explained that the family court's order vacating the striking of the petition and placing the matter back on calendar for a hearing was an appealable order. Therefore, this court ordered the instant case proceed as an appeal.

In September 2018, the family court referred the case to family court services.[2] The child custody counselor recommended, "Any contact between the child and the paternal grandmother or paternal aunt shall be at the mother's discretion." The family court held an evidentiary hearing on November 5. After witnesses testified and argument was presented, the family court made the custody counselor's recommendation the order of the court. On January 15, 2019, the family court filed its findings and order after hearing. The findings and order after hearing reflect, "Any contact with the minor child and the paternal grandmother or paternal aunt shall be at the mother's discretion."[3]

B. ANALYSIS

Adoptive-Mother contends the family court erred by vacating its order striking the petition because Petitioners are legal strangers to J.R., who have no right of visitation. On our own, we raise the issue of whether this appeal is moot.

" ' "It is this court's duty ' "to decide actual controversies by a judgment which can be carried into effect, and not to give opinions upon moot questions or abstract propositions, or to declare principles or rules of law which cannot affect the matter in

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[2] "The perfecting of an appeal shall not stay proceedings as to those provisions of a judgment or order which award, change, or otherwise affect the custody, including the right of visitation, of a minor child in any civil action." (Code Civ. Proc., § 917.7.)

[3] We take judicial notice of the (1) the family court's register of actions in this case; (2) the November 15, 2018, custody recommendations attached to the November 15 minute order; and (3) the January 15, 2019, findings and order after hearing. (*Dandrea et al. v. Ramirez* (Super. Ct. San Bernardino County, case No. FAMVS1701524).) (Evid. Code, § 452, subd. (d).)

issue in the case before it . . . .” ’ [Citations.]” [Citations.] “ ‘When no effective relief can be granted, an appeal is moot and will be dismissed.’ ” ’ ” (*Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1215.)

Adoptive-Mother prevailed on the petition in the family court. Adoptive-Mother prevailed in that the family court ruled that any visitation between Petitioners and J.R. would be at Adoptive-Mother’s discretion. In other words, the family court denied Petitioners’ request for court-ordered visitation. Accordingly, this court cannot provide Adoptive-Mother any further relief. If we concluded the family court erred by placing the matter back on calendar, then Adoptive-Mother could obtain no greater relief than that she has already obtained by prevailing on the merits in the family court, i.e., Adoptive-Mother decides if any visitation occurs. Accordingly, because we cannot provide Adoptive-Mother with any effective relief, we deem the issue to be moot.

We have considered whether to address the issue on the chance that Petitioners might, in the future, again petition the family court for visitation with J.R. We conclude the possibility of a future petition is an abstract proposition, in that it presents only the chance of a future controversy—not a present dispute between the parties. Accordingly, we will dismiss the appeal as moot.

DISPOSITION

The appeal is dismissed. Appellant, C.R., is to bear her own costs on appeal. (Cal. Rules of Court, rule 8.278(a)(5).)[4]

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MILLER
J.

We concur:

McKINSTER
Acting P. J.

RAPHAEL
J.

[4] Petitioners I.L. and D.D. did not make an appearance in this court. Therefore, we do not address appellate costs in relation to Petitioners.